

REMARKS

These remarks are submitted in response to the Office Action mailed on April 16, 2008. Applicant wishes to thank the Examiner for the helpful telephone conference of July 15, 2008, in which the interpretation of the art cited against the application was discussed. Applicant has amended his claims in an effort to address the concerns raised by the Examiner and believes that the amended claims successfully avoid the identified prior art.

In Paragraph 1 of the Office Action, the Examiner acknowledged the filing of Applicant's paper of January 2, 2008. Applicant notes the filing.

Claims Rejection – 35 U.S.C. § 102(b): Claims 32, 34, 35, 42-44, 46 and 48-51

In paragraph 2 of the Officer Action, Examiner rejected Claims 32, 34, 35, 42-44, 46 and 48-51 under 35 U.S.C. § 102(b) as being anticipated by Viegas (US 5,397,955). In light of the Examiner's discussion of Viegas, Applicant has amended independent claims 32 and 34 to more clearly express that the stopper (claim 32) or plug (claim 34) fits within the interior of the hollow cylinder. Depending claims 35, 42-44, and 48-51 remain unchanged. Applicant submits that these changes put his application in condition for allowance. To the extent Applicant's amendments do not satisfy the Examiner's concerns with respect to 35 U.S.C. 102(b), Applicant respectfully traverses this rejection on the grounds set forth below.

Viegas discloses a bottom delivery package for storing and dispensing fluid products with a self-sealing valve that permits the discharge of fluid via manual squeezing forces. (Claim 1). Viegas particularly discloses and claims a package where the valve automatically returns to the closed position upon removal of manual squeezing to stop further dispensing of the fluid product. (Claim 1). On the other hand, Applicant teaches and claims a container conducive to both liquid and gaseous inflation and designed for repetitive filling and which employs a removable stopper for insertion into the interior of the hollow cylinder when the container is not being filled or unfilled to permit this functionality. (Claim 32). Because Viegas uses a fixed valve that it is not designed to permit gaseous inflation nor intended to permit refilling of the container, Applicant respectfully

believes that the liquid dispensing package of Viegas does not anticipate the refillable liquid/gas container disclosed and claimed by Applicant.

Examiner stated that Viegas discloses a flexible container for liquid cleanser having, among other things, “a hollow cylinder (31), having an open first end (Fig 30, bottom), and an open second end (50) and having a flexible base (19)...” (Office Action, paragraph 2). However, as Viegas makes clear, 50 does not represent an “open second end” but is instead a “self-sealing valve.” The Viegas patent states, “The self-sealing valve 50 comprises concave face 57, having one or more slits 58 disposed therein, and annular side wall 55. Self-sealing valve 50 is preferable of one piece construction made from silicone....The valve is designed to open in response to manual squeezing forces being applied to the package along the front and back panels 11 and 14. Upon removal of the manual squeezing forces the valve closes thereby substantially terminating the discharge of the fluid through the discharge orifice 30.” (Col 6, lines 39-52). Thus, unlike Applicant’s cylinder, which permits “repetitive filling and expelling said liquid cleanser” (claim 1), Viegas explicitly teaches a package with a self-sealing valve, deformable through manual squeezing, and designed to inhibit the flow of liquid out of the package. That is, the valve disclosed in Viegas only opens as a result of “manual squeezing” of the package. (Claim 1) That such a valve is open only when pressure is applied to the contents of the package indicates that the package is in no way designed or intended to be refilled, because to refill the package it would be necessary to apply pressure on the package to open the self-sealing valve, while applying a greater pressure to force liquid or gas through the now open valve. Such an undertaking would be difficult if not impossible. For example, if the package were empty, it would likely be impossible to open the valve to permit filling of the container. Thus, if anything, the disclosure of Viegas teaches away from the refillable package of Applicant.

For similar reasons, Applicant respectfully disagrees with Examiner’s statement that “Viegas discloses...a closure having a hollow cylinder...for repetitive filling and expelling of liquid cleanser in response to squeezing force applied to the members and a stopper....” (Office Action, paragraph 2). As indicated, because it teaches the use of a self-sealing valve, Viegas does not disclose, but instead teaches away from, the repetitive filling and expelling of liquid cleanser from the claimed

package. In fact, nowhere in Viegas is there any mention of the possibility of refilling of the package. On the other hand, the third sentence of Applicant's specification explicitly states, "[n]otably, the container provides for multiple, sequential reuse for liquids and gaseous fluids." (Paragraph 0022).

Additionally, Claim 32, the initial independent claim, has been amended to recite, "a stopper for insertion into the interior of said open first end of said hollow cylinder." (Independent claim 34 is similar, save that the "stopper" element is designated a "plug.") While Viegas discloses a "cap" (claim 12) for its self-sealing valve assembly, the design and function of the cap is distinct from Applicant's stopper or plug, in that the cap does not impede release of liquid from the package but merely covers the seal-sealing valve assembly. In fact, the specification of Viegas specifically teaches away from the use of a stopper or similar closure, stating that "[t]he use of a self-sealing valve eliminates the need to operate a removable closure when dispensing the product." (Column 1, lines 41-43). Thus, Viegas does not teach this aspect of Applicant's invention. Examiner's finding of anticipation by Viegas on the grounds discussed above is therefore unwarranted, and withdrawal of the rejection is respectfully requested.

Examiner also stated that Viegas discloses a container having a modulus of elasticity conducive to gaseous inflation. However, Applicant is unable to find in the disclosure of Viegas any discussion regarding elasticity of the container for gaseous inflation. In fact, it appears that Viegas is specifically directed to "packaging for storing and dispensing fluid materials" and does not contemplate the storing of gases. (Col. 1, lines 7-8).

Materials having a modulus of elasticity conducive to gaseous inflation include materials that are elastic and capable of both deformation as well as expansion. However, as indicated, in the case of Viegas a material capable of expansion due to internal pressurization would not be suitable, as this would prevent the valve mechanism from opening. Applicant submits that Examiner has read into Viegas this limitation, as gaseous inflation is neither an intended purpose nor a disclosed function of Viegas. According to MPEP Section 2131, in order for a reference to anticipate a claim, "the identical invention must be shown in as complete detail as is contained in the ...claim."

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236. In the present instance, Viegas does not disclose in any detail pertaining to elasticity for gaseous inflation, and therefore does not anticipate this limitation in applicant's claimed invention.

In light of the foregoing discussion, it is respectfully submitted that all the elements in the claimed invention are not found in Viegas, and as such are not anticipated by this reference. Reconsideration and withdrawal of the rejections related thereto is respectfully requested.

Claims Rejection – 35 U.S.C. § 103(a): Claims 33, 36, 37, 40, 41, 45 and 47

In paragraph 3, Examiner rejected Claim 33 under 35 U.S.C. § 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Besse et al. (US 5,810,201). As set out above, Viegas does not teach all the elements of Claim 32, from which Claim 33 depends. Besse et al. merely teaches a container for liquid soap created from polyvinyl chloride. Accordingly, the combination of Viegas and Besse et al. does not disclose, teach or suggest all the elements of Claim 33, and thus the combination of these references would not render this claim unpatentable. Reconsideration of this rejection is respectfully requested.

In paragraph 4, Examiner rejected Claims 36, 37, 40 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Haugk et al. (US 5,937,554). As set out above, Viegas does not teach all the elements of Claims 32 and 34, from which Claims 36, 37, 40 and 41 depend. Haugk et al. merely teaches a container with a film insert in the container. Accordingly, the combination of Viegas and Haugk et al. does not disclose, teach or suggest all the elements of Claims 32 and 34, and thus the combination of these references would not render claims 36, 37, 40 and 41 unpatentable. Reconsideration of this rejection is respectfully requested.

In paragraph 5, Examiner rejected Claim 45 under 35 U.S.C. § 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Flackett et al. (US 6,343,712). As set out above, Viegas does not teach all the elements of Claim 32, from which Claim 45 depends. Flackett et al. merely teaches a liquid soap dispenser formed in the shape of an animal. Accordingly, the combination of Viegas and Flackett et al. does not disclose, teach or suggest all the elements of Claim 32, and thus the

combination of these references would not render claim 45 unpatentable. Reconsideration of this rejection is respectfully requested.

In paragraph 6, Examiner rejected Claim 47 under 35 U.S.C. § 103(a) as being unpatentable over Viegas (US 5,307,955) in view of Henning et al. (US 3,623,638). As set out above, Viegas does not teach all the elements of Claim 32, from which Claim 47 depends. Henning et al. merely teaches a liquid soap dispenser formed in the shape of a flower. Accordingly, the combination of Viegas and Henning et al. does not disclose, teach or suggest all the elements of Claim 32, and thus the combination of these references would not render claim 47 unpatentable. Reconsideration of this rejection is respectfully requested.

Conclusion

In conclusion, based on the foregoing amendments to the claims and arguments discussed above, it is submitted that the claimed invention is not anticipated or obvious in light of the cited prior art. It is respectfully submitted that the claims are not rendered unpatentable and are in a condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested.

Respectfully submitted,



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